

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

James Erick Jones, #0304932,)	C/A No.: 9:07-0497-JFA-GCK
)	
Plaintiff,)	
vs.)	ORDER
)	
Mullins Police Department; and)	
Officer Larry Bailey,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, James Erick Jones, is an inmate with the South Carolina Department of Corrections (SCDC). He initiated this action pursuant to 42 U.S.C. § 1983 contending that the defendant Bailey acted with malicious intent while effecting a traffic stop for alleged reckless driving by the plaintiff. The plaintiff also asserts that defendant Bailey used excessive force when he shot the plaintiff in the stomach.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should grant defendants' motion for

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

summary judgment.² The Magistrate Judge opines that defendant Bailey's use of force was objectively reasonable in light of the circumstances at the time and that the plaintiff's constitutional rights were not violated.

The Magistrate Judge also concludes that defendant Bailey is entitled to qualified immunity under Section 1983. Further, the Magistrate suggests that the Mullins Police Department is not liable under the theory of respondeat superior and the plaintiff fails to name a policy or establish a custom by the police department that deprives the plaintiff of a federal right.

Finally, the Magistrate Judge suggests that the plaintiff fails to support claims of negligent hiring of defendant Bailey. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation. He filed timely objections³ to the Report. However, the plaintiff's objections merely reiterate arguments that were presented to and rejected by the Magistrate Judge. Finding no merit to any of the objections, the court must overrule them and adopt the

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Plaintiff did respond to the motion.

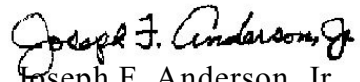
³ Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

Report and Recommendation.

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and defendants' motion for summary judgment is granted.

IT IS SO ORDERED.

January 29, 2008
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge